

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BILLY BRANTLEY, et. al.	:	Case No. C-I-01-387
	:	
Plaintiffs,	:	Judge Susan J. Dlott
	:	
vs.	:	
	:	
CINERGY CORP.	:	DEFENDANT, CINERGY CORP.'S
	:	INSTANTER MOTION FOR LEAVE TO
	:	FILE DEFENDANT, CINERGY CORP.'S,
	:	MOTION FOR SUMMARY
Defendant.	:	JUDGMENT AS TO PLAINTIFF,
	:	PLAINTIFF, TODD TOLBERT IN
	:	<u>EXCESS OF 20 PAGES</u>
	:	(SUPPORTING AFFIDAVIT OF JILL T.
	:	O'SHEA ATTACHED HERETO)

Comes now Defendant, Cinergy Corp., pursuant to Local Rule 7.2 (3) of the United States District Court for the Southern District of Ohio, and respectfully moves the Court for leave to file Defendant, Cinergy Corp.'s, Motion for Summary Judgment as to Plaintiff, Todd Tolbert in Excess of Twenty (20) Pages with four (4) additional pages for a total of twenty-five (24) pages, for good cause shown. This Motion is supported by the within Memorandum and the Affidavit of Jill T. O'Shea attached hereto.

Respectfully submitted,

/s/ Jill T. O'Shea
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MEMORANDUM

Defendant, Cinergy Corp., requires four (4) additional pages in order to fully and adequately present all relevant factual and legal arguments in support of Defendant, Cinergy Corp.'s, Motion for Summary Judgment as to Plaintiff, Todd Tolbert. Defendant requires the additional pages to fully address the factual allegations including, but not limited to, alleged failure to promote, weight restriction issue, other alleged unfair discipline, alleged hostile work environment and policies, failure to take advantage of corrective opportunities and procedural posture.

Further, Defendant, Cinergy Corp., is required to address the substantial legal arguments including, but not limited to, Cinergy Corp. is not an employer under Title VII; Plaintiff's race discrimination claims under Title VII and Ohio Law are not actionable as a matter of law including the sub-issues that Plaintiff's claims are barred as untimely, Plaintiff offers no direct evidence of race discrimination in any employment action, Plaintiff cannot demonstrate a prima facie of race discrimination as a matter of law, Plaintiff cannot demonstrate a prima facie case because he cannot demonstrate a materially adverse employment action, Plaintiff cannot demonstrate a prima facie case that similarly situated employees were treated more favorably, CG&E's legitimate, non-discriminatory reason justified its actions as a matter of law and Plaintiff is unable to demonstrate pretext as a matter of law; Plaintiff's racial harassment claims under Title VII are not actionable as a matter of law including the sub-issues, Plaintiff cannot demonstrate a hostile work environment as a matter of law and Defendant, CG&E, exercised reasonable care to prevent and promptly correct any harassing behavior and Plaintiff failed to take advantage of corrective opportunities; and Plaintiff has failed to demonstrate a prima facie case of disability discrimination as a matter of law. Defendant, Cinergy Corp., has complied

with Rule 7.2 (3) of the Local Rules of the Southern District of Ohio by including a combined table of contents and summary of arguments. (See Affidavit of Jill T. O'Shea, Esq., ¶¶ 2-5).

Thus, for good cause shown, Defendant, Cinergy Corp., respectfully requests that this Court grant Defendant's Instant Motion for Leave to file Motion for Summary Judgment as to Plaintiff, Todd Tolbert in Excess of Twenty (20) Pages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was forwarded via ordinary mail this 28th day of July, 2004 to:

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